

PERTAINING TO THE AMENDMENT OF CHAPTER 86 OF THE CODE OF CALVERT COUNTY.

WHEREAS, *Local Government Article*, Section 12-103 of the Maryland Annotated Code, as amended, authorizes and empowers the Board of County Commissioners of Calvert County, Maryland (hereinafter, the "Board of County Commissioners") to establish a merit system in connection with the appointment of all county officials and employees not elected or appointed under the Constitution or public general laws of the State;

WHEREAS, by Ordinance 42-09, the Board of County Commissioners did adopt such a merit system, which is codified at Title 86 of the Code of Public Local Laws of Calvert County, Maryland, being Title 86 of *Article 5* of the Code of Public Laws of Maryland (hereinafter, the "Code"), the Annual Budget and Appropriation Act each year;

WHEREAS, the Office of Personnel has recommended that the Board of County Commissioners adopt certain amendments to Chapter 86 of the Code, more specifically set forth below;

WHEREAS, a public hearing regarding the certain amendment of Chapter 86 of the Code was duly advertised in for two consecutive weeks before the public hearing held on January 28, 2014, at which time the Board of County Commissioners received public comment;

WHEREAS, upon due consideration of the comments of the public and staff and in furtherance of the public health, safety and welfare, the Board of County Commissioners finds that it is in the best interest of the public health, safety and welfare of the citizens of Calvert County, Maryland to adopt certain amendments to Chapter 86 of the Code as set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Calvert County, Maryland hereby approves and enacts the following amendment to Chapter 86 of the Code:

1. Section 86-4-701 of the Code shall be amended, effective upon the date of adoption of this Ordinance, by repealing section 86-4-701 of the Code in its entirety and adopting in its place the following:

§ 86-4-701. Eligibility.

- A. An employee who is a member of the National Guard, the Army, Navy, Air Force, Coast Guard, or Marine Reserve shall be entitled to military leave for military training. Merit employees and part-time and grant-funded employees regularly scheduled to work 50% or more of the normal pay period are eligible for military leave in accordance with the terms of this article. Contractual and appointed employees are eligible for military leave only if such leave is granted by an express term of their employment contract or appointment, respectively. Employees who are called for military training and who are not eligible for military leave are entitled to leave without pay as required by federal law and in accordance with § 86-4-1101. Approved military leave shall be paid at the regular rate of pay for not more than ten work days per year. Any employee

required to report for military service must give the Supervisor as much advance notice as possible.

B. An employee who has worked for the employer for the last 12 months and at least 1,250 hours in that same period of time is eligible for one day of leave on the day an immediate family member (parent, step parent, spouse, child or step child) is leaving for or returning from active duty outside of the United States as a member of the Armed Forces of the United States. The employee may not be required to use paid leave; however, unless the employee elects to use paid leave, the one day will be leave without pay. The employer may require documentation verifying that the leave is taken for this qualifying reason.

2. Article XIII of Chapter 86 of the Code shall be amended, effective upon the date of adoption of this Ordinance, by repealing Article XIII of Chapter 86 of the Code in its entirety and adopting in its place the following:

INSERT REVISED TEXT OF ARTICLE XIII

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that Chapter 86 of the Code, as amended hereby, shall remain in full force and effect.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that, in the event any portion of this Ordinance is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Ordinance, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in enacting this Ordinance.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that the foregoing recitals are hereby incorporated and adopted as if fully set forth.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland that this Ordinance shall be adopted and effective upon recordation, which shall be no sooner than ten (10) days from the date of adoption.

DONE, this 28th day of January, 2014, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: 5
Nay: 0
Absent/Abstain: 0

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY, MARYLAND

Maureen S. Frederick
Maureen Frederick, Clerk

Pat Nutter
Pat Nutter, President

Steven R. Weems
Steven R. Weems, Vice President

Approved for legal sufficiency on
January 9, 2014 by:

Gerald W. Clark
Gerald W. Clark

John B. Norris
John B. Norris, County Attorney

Susan Shaw
Susan Shaw

Evan K. Slaughenhoupt Jr.
Evan K. Slaughenhoupt Jr.

Received for Record 2/7 2014
at 11:00 o'clock 7 M. Same day
entered in Liber KFS No. 94
46 COUNTY COMMISSIONERS
RESOLUTION.

Pat Nutter

ARTICLE XIII
Family and Medical Leave

§ 86-4-1301. General statement.

The County is committed to complying with applicable federal regulations concerning the Family and Medical Leave Act (FMLA). This article provides information in regard to the subject matter covered and shall be interpreted by the Director of Personnel. In the event of any inconsistencies between this article and the federal law or adopted regulations, the federal law or adopted regulations shall govern.

§ 86-4-1302. Definitions.

For purposes of this article only, the following terms have the following meanings:

CHRONIC SERIOUS HEALTH CONDITION – A period of incapacity or treatment that requires periodic visits (at least twice a year) for treatment by a Health Care Provider or by a nurse under direct supervision of a Health Care Provider; continues over an extended period of time, including recurring episodes of a single underlying condition; and may cause episodic rather than continuing periods of incapacity.

CONTINUING TREATMENT - A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- (1) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a Health Care Provider, by a nurse under direct supervision of a Health Care Provider (e.g., physical therapist), or by a provider of health care services under orders, or on referral by, a Health Care Provider. For treatment from a Health Care Provider, it must be in-person visits the first of which must take place within seven days of the first day of incapacity;
- (2) Treatment by a Health Care Provider on at least one occasion, which results in a regimen of Continuing Treatment under the supervision of the Health Care Provider. For treatment from a Health Care Provider, it must be an in-person visit which must take place within seven days of the first day of incapacity;
- (3) A period of incapacity because of pregnancy; or for prenatal care;
- (4) A period of incapacity or treatment for a Chronic Serious Health Condition;
- (5) A period of incapacity for permanent or long-term conditions for which treatment may not be effective; or
- (6) Any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a condition which would likely result in an incapacity of more than three consecutive, full calendar days absent medical treatment.

COVERED ACTIVE DUTY/CALL TO COVERED ACTIVE DUTY – A current member of the Armed Forces, National Guard, or Reserves who is called or under a call or order to active duty (or has been notified of an impending call or order to active duty) to a foreign country in support of a contingency operation.

COVERED MILITARY MEMBER – A Covered Military Member for Military Caregiver Leave is the employee's Spouse, Son, Daughter, Parent, or Next of Kin of a Covered Servicemember.

COVERED SERVICEMEMBER – A current member of the Armed Forces, including the National Guard or Reserves, who is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty. A Covered Servicemember also includes a Covered Veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty.

COVERED VETERAN – A veteran who was a member of the Armed Forces, National Guard, or Reserves and who was discharged or released under conditions other than dishonorable at any time during the five year period prior to the first date the eligible employee takes FMLA leave to care for the Covered Veteran.

HEALTH CARE PROVIDER – Includes licensed doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State of Maryland, nurse practitioners, physicians assistants, nurse midwives, and clinical social workers authorized under state law, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts, any Health Care Provider that is recognized by the employer or accepted by the group health plan of the employer as authorized to provide certification for purposes of claim and a Health Care Provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

INTERMITTENT LEAVE – Leave taken in separate blocks of time due to a single qualifying reason.

MILITARY CAREGIVER LEAVE – Leave taken by an employee who is a Covered Military Member to care for a Covered Servicemember who is a current member or veteran of the Armed Forces, National Guard, or Reserves who has incurred a Servicemember Serious Injury or Illness or a Veteran Serious Injury or Illness.

MILITARY QUALIFYING EXIGENCY – A non-medical activity that is directly related to the active duty or call to active duty status to a foreign country of a family member. Covered family members are limited to a Spouse, Son, Daughter, or Parent of the employee and must be a current member of the Armed Forces, National Guard or Reserves, in support of contingency operation. For an activity to qualify as an exigency, it must fall within the categories below:

- Short-notice deployment to address any issue that arises from the military member being notified of a call to active duty or order to covered active duty seven or less calendar days prior to the date of deployment;
- Military events such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs, and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
- Childcare/school activities (temporary childcare, not on-going childcare) arising from the active duty or call to active duty status of a Covered Military Member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent,

immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility;

- Financial/legal arrangements to address a Covered Military Member's absence;
- Counseling provided by someone other than a Health Care Provider for oneself, the Covered Military Member, or the child of the Covered Military Member, the need for which arises from the active duty or call to active duty status of the Covered Military Member;
- Rest and recuperation (maximum of 15 calendar days);
- Post-deployment activities including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the Covered Military Member's active duty status, and addressing issues arising from the death of a Covered Military Member;
- Parental care; and
- Any other event that the employee and employer agree is a qualifying exigency.

NEXT OF KIN – A Covered Servicemember's nearest blood relative other than the Covered Servicemember's Spouse, Parent, Son, or Daughter, in the following order of priority, unless the Covered Servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave under FMLA, in which case the designated individual shall be deemed to be the Covered Servicemember's Next of Kin:

- (1) Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
- (2) Brothers and sisters;
- (3) Grandparents;
- (4) Aunts and uncles;
- (5) First cousins.

PARENT -- A biological, adopted, step or foster father or mother, or any other individual who stood in loco parentis (in place of a parent) to an employee when the employee was a child.

REDUCED SCHEDULE LEAVE – A leave schedule that reduces an employee's usual number of working hours per workweek or workday based upon a Health Care Provider's certification.

SERIOUS HEALTH CONDITION -- An illness, injury, impairment, or physical or mental condition that involves inpatient care or Continuing Treatment by a Health Care Provider.

SERVICEMEMBER SERIOUS INJURY OR ILLNESS – An injury or illness that was incurred by the Covered Servicemember in the line of active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of active duty in the

Armed Forces, and that may render the servicemember medically unfit to perform the duties of the office, grade, rank, or rating.

SON OR DAUGHTER -- A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in place of a parent). The child must be under 18 years of age, or 18 years of age or older and incapable of self-care because of mental or physical disability. For Son or Daughter of a Covered Servicemember, there is no age limitation.

SPOUSE – A husband or wife as defined or recognized under Maryland law for purposes of marriage.

VETERAN SERIOUS INJURY OR ILLNESS – An injury or illness that was incurred by the member in the line of active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of active duty in the Armed Forces) and manifested itself before or after the member became a veteran and is:

- (1) a continuation of a serious injury or illness and inability to perform the duties of the office, grade, rank, or rating;
- (2) a physical or mental condition where the veteran has received a VA Service Related Disability Rating (VASRD) of 50% or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave;
- (3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
- (4) an injury, including a psychological injury, on the basis of which the Covered Veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

WORKWEEK -- Standard number of hours an employee is regularly scheduled to work in seven consecutive calendar days. If a part-time employee's schedule varies from week to week, a weekly average of the hours in the previous 12 months shall be used for calculating the employee's normal workweek.

§ 86-4-1303. Eligibility.

A. Family and medical leave (FML) is the equivalent of 12 workweeks (or 26 workweeks for Military Caregiver Leave) of job-protected leave granted to eligible employees who have been employed with Calvert County Government for at least 12 months and who have worked 1,250 hours during the previous 12 month period. Hours worked does not include time spent on paid or unpaid leave or worker's compensation. For the purpose of satisfying that 12 month period of employment, employment prior to a continuous break in service of seven years or more shall not be counted unless the break in service is: (1) due to an employee's fulfillment of military obligations; or (2) governed by a collective bargaining agreement or other written agreement. Absences from work due to or necessitated by USERRA-covered service is counted in determining an employee's eligibility.

B. For birth, placement, employee family member's Serious Health Condition, employee's own Serious Health Condition, or Military Qualifying Exigency, an employee shall be entitled to a

combined total of 12 workweeks of FML during a calendar year, regardless of the various reasons for FML.

C. An eligible employee is entitled to a combined total of 26 workweeks of Military Caregiver Leave and leave for any other FMLA-qualifying reason in a single 12 month period, provided that the employee may not take more than 12 workweeks of leave for any FMLA-qualifying reason during this period.

§ 86-4-1304. Authorized uses.

FML may be used for:

- A. Birth of a Son or Daughter of the employee and in order to care for such Son or Daughter;
- B. Placement of a Son or Daughter with the employee for adoption or foster care;
- C. Care of the Spouse, Son, Daughter, or Parent of the employee, if such Spouse, Son or Daughter or Parent has a Serious Health Condition, hereinafter referred to as illness of a family member;
- D. A Serious Health Condition that makes the employee unable to perform the essential functions of their position, hereinafter referred to as illness of an employee;
- E. A Military Qualifying Exigency;
- F. Care for a Covered Servicemember.

§ 86-4-1305. Procedures and conditions.

A. The entitlement to leave for birth or placement of a child for adoption or foster care shall expire at the end of the 12 month period beginning on the date of birth or placement and shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise.

B. If an employee requests Intermittent Leave or leave on a reduced schedule for illness of a family member or an illness of the employee that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily, to accommodate recurring periods of leave, to an available alternative position for which the employee is qualified and that has equivalent pay and benefits. Intermittent Leave or leave on a reduced schedule should be limited solely to treatment, recovery from treatment or recovery from illness.

C. The employee may choose to substitute any available accrued paid leave to which they may be entitled, i.e.; (annual, sick, personal, compensatory leave), etc. in accordance with the authorized uses of such leave as prescribed in the corresponding articles of this Chapter. All paid leave taken shall be subtracted from the applicable workweeks of FML entitlement so that an employee shall have a cumulative total of 12 or 26 workweeks, whichever is applicable, of paid and/or unpaid FML.

D. If Spouses are employed by the same employer, they are entitled, in aggregate, to a total of 12 workweeks of FML within a calendar year if the leave is because of the birth or placement of a child for adoption or foster care, or if they are needed to care for a Parent with a Serious Health

Condition. Otherwise, married employees are entitled to the same individual leave usage as other employees and may take FML at the same time.

E. If Spouses are employed by the same employer, they are entitled, in aggregate, to a total of 26 workweeks of Military Caregiver Leave during a 12 month period.

F. If an employee on FML takes off a full workweek during which a paid holiday falls, the holiday hours count against the employee's FML entitlement. If the employee takes FML leave increments of less than a full workweek during which a paid holiday falls, the holiday hours do not count against the employee's FML entitlement.

G. Sick leave incentive pay shall be paid in accordance with §86-4-1004. Incentive.

§ 86-4-1306. Employee responsibilities.

A. An employee shall provide at least verbal notice to make the employer aware that the employee needs FML qualifying leave and must follow up with a Request for Family and Medical Leave Form. The completed form must state the reason for the leave, the type of leave (paid or unpaid), duration of the leave, the starting and ending dates of the leave, and other pertinent facts.

B. An employee must provide the employer at least 30 days advance notice before FML is to begin if the need for the leave is foreseeable based on expected birth, placement or adoption or foster care, planned medical treatment for a Serious Health Condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a Covered Servicemember.

C. If 30 days notice is not practicable despite the employee's diligent, good faith efforts because of a lack of knowledge of approximately when the leave will begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

D. If FML is requested for planned medical treatment, the employee must consult with the employer to make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations.

§ 86-4-1307. Employer's Responsibilities.

A. It is the employer's obligation, whenever possible, to designate leave as FML, and the designation of FML may be made only on the basis of information provided by the employee or the employee's spokesperson, such as a Spouse, adult child, Parent or doctor.

B. Upon receipt of the Employee Request Form for FML, the employer is required to give the employee notice of their eligibility for leave by completing the Notice of Eligibility and Rights and Responsibilities Form within five business days and to promptly tell the employee whether they are eligible. If not eligible for leave, the employer must tell the employee the reason for ineligibility.

C. The Employer may retroactively designate leave as FML qualifying if appropriate notice is given to the employee, provided the retroactive designation does not cause the employee harm.

§ 86-4-1308. Medical certification of leave.

A. A request for FML must be supported by the applicable, fully completed Medical Certification Form within 15 calendar days.

B. For Military Qualifying Exigency, the employee shall provide a copy of the Covered Military Member's active duty orders or other documentation issued by the military. If the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military setting forth the dates of the military member's leave shall be provided.

C. In lieu of a Medical Certification Form for Military Caregiver Leave, if an invitational travel order (ITO) or an invitational travel authorization (ITA) is issued, this documentation will suffice. The employer may seek authentication and clarification of the ITO or ITA, but cannot seek a second or third opinion during the period of time in which leave is supported by an ITO or ITA.

D. Failure to provide requested medical certification within 15 calendar days, or as soon as practicable, may result in denial of leave until it is provided.

E. Where the employer has reason to doubt the validity of the initial medical certification provided, except for Military Caregiver Leave, the employer may require a second doctor's opinion (not regularly employed by the County) designated by and at the expense of the County within five business days after the leave begins. Notwithstanding the foregoing, the employer may request certification at a later date and in accordance with Section 86-4-1309, below, if it has reason to question the appropriateness or duration of the leave.

F. In any case where the second opinion differs from the original opinion, the employer may require a third opinion from a mutually agreed upon doctor at the employer's expense. The third opinion shall be considered to be final and shall be binding on the employer and the employee.

§86-4-1309. Recertifications.

A. Employer generally may not request a recertification more frequently than every 30 days and only for an employee's Serious Health Condition.

B. If the original certification indicates that the minimum duration of the incapacity will be for more than 30 days, the employer must wait until that time has passed before requesting a recertification.

C. If the employee requests an extension of leave, or circumstances have changed significantly, such as the nature of the illness or duration or frequency of the absences, the employer may request recertification in less than 30 days.

D. Employer may ask for a recertification at any time if it has reason to doubt the validity of the most recent certification.

E. Recertification is at the employee's expense.

F. Employee must provide the requested certification within the time requested by the employer, which must be at least 15 calendar days after the request is made, unless doing so is not practicable. If the employee fails to provide the recertification, the employer can delay FML until it has been provided.

G. For Military Caregiver Leave, the employer cannot seek recertification.

§ 86-4-1310 Designation Notice.

When the employer has enough information to determine whether leave qualifies for FML coverage, the employer must notify the employee in writing by completing the Designation Notice Form within five business days (absent extenuating circumstances).

§ 86-4-1311. Maintenance of benefits during absence.

A. During an approved period of FML, the employer must maintain coverage under its group health plan at the level and under the conditions coverage would have been provided if the employee had continued to work for the duration of such leave.

B. If paid leave is substituted for unpaid FML, the employer shall deduct the employee's portion of the health plan premium as a regular payroll deduction.

C. If the employee's leave is unpaid, the employee must contact the Department of Finance and Budget to make arrangements to pay the employee's portion of the health plan premium as well as any other payroll deductions.

D. Any employee who is in a non-pay status is not entitled to retirement credit or to earn annual, sick, personal, or holiday leave. If an extension is needed beyond the 12 or 26 workweeks of FML, paid leave or an unpaid leave of absence may be approved.

§ 86-4-1312. Return to work.

A. Upon completion of FML and return to work, the employee shall be reinstated in the position held by the employee or be restored to an equivalent position with employment benefits, pay, and other terms and conditions of employment as when the leave commenced. An employee who returns to work after the employee's serious illness must submit a Return to Work Medical Certification Form, if designated by the supervisor. If it is not practicable under the circumstances to obtain and/or complete the above form, a doctor's certificate is required stating the following:

(1) Date of planned return to work; and

(2) Statement and signature from the Health Care Provider that employee is able to resume performing the essential functions of the position with or without a reasonable accommodation.

B. An employee who does not return to work or obtain approved paid leave or an unpaid leave of absence is considered absent without leave (AWOL).

C. An employee who does not return to work may be required to reimburse the employer for all premiums paid to maintain their health coverage during the unpaid FML period provided their failure to return to work is for a reason other than the continuance, recurrence or onset of an illness of a family member or employee, or other circumstances beyond the employee's control. An employee who is unable to return to work for continuance, recurrence, or onset of an illness of a family member or employee shall provide a medical certification from the appropriate Health Care Provider in accordance with § 86-4-1308. If the employee fails to furnish the requested certification within 15 calendar days of the employer's request, the employer may recover the health insurance premiums if paid during the period of unpaid leave.

§ 86-4-1313. Posting requirement.

It is the responsibility of Calvert County Government to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division.